

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH JERMAINE SMITH,
Petitioner,
v.
STATE OF CALIFORNIA, et al.,
Respondents.¹

Case No. 22-cv-01572-VC

**ORDER DIRECTING PETITIONER
TO FILE SUPPLEMENTAL
OPPOSITION TO RESPONDENT'S
MOTION TO DISMISS FOR FAILURE
TO EXHAUST**

Re: Dkt. No. 18

Joseph Jermaine Smith, a state prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On August 1, 2022, the respondent filed a motion to dismiss the petition for failure to exhaust state court remedies. Dkt. No. 18. Smith has filed a letter in opposition. Dkt. No. 20.

In the motion, the respondent argues that the three claims raised by Smith in his petition for review before the California Supreme Court are different from the three claims raised in his current habeas petition. The respondent also argues that because Smith has not made a showing of good cause to justify his failure to exhaust, he is not entitled to a stay of his petition. *See Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016); *see also Rhines v. Weber*, 544 U.S. 269 (2005). The respondent appears correct. However, in his opposition, Smith writes that he exhausted his claims by filing a petition before the California Supreme Court. *See* Dkt. No. 20 at 1. To the extent that is the case, without a copy of that document, it is not clear what claims were raised in Smith's state habeas petition, and whether those claims overlap with the claims raised in his

¹ The Clerk shall substitute as the respondent Christian Pfeiffer, the current warden of Kern Valley State Prison, where Smith is incarcerated.

petition before this court.

Accordingly, Smith is provided an additional 28 days to file a supplemental opposition to the motion to dismiss. If Smith chooses to file a supplemental opposition, he must provide a copy of any state habeas petitions and any other documents relevant to the issue of whether he exhausted his claims in state court. In addition, to the extent his claims are unexhausted, and he wishes to stay his petition, he must explain what, if any, good cause justifies his failure to exhaust.

For the reasons expressed above:

1. Smith is ordered to file a supplemental opposition to the respondent's motion to dismiss within 28 days of this order.
2. Smith is directed to include all relevant documents to support his opposition, and, if applicable, any explanation he may have to justify his failure to exhaust.

IT IS SO ORDERED.

Dated: December 5, 2022



VINCE CHHABRIA
United States District Judge